

Appl. No. 10/719,786  
Docket No. 9431  
Amdt. dated 21 July 2006  
Reply to Office Action mailed on 2 May 2006  
Customer No. 27752

## REMARKS

### Claim Status

Claims 5-7, 9-11, 13, 14 and 18-20 are pending in the present application. No additional claims fee is believed to be due.

Claims 4 and 16 have been cancelled.

Claim 13 has been amended to include claim 4.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejection Under 35 U.S.C. §103(a) Over Schoelling (U.S. 2001/0014348)

Claims 5-7, 9-11, 13, 14, 18 and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Schoelling.

With respect to claims 5-7, 9-11, 13, 14, 18 and 19 and obviousness: Applicants respectfully traverse the rejection as Schoelling neither discloses or suggests a tampon for feminine hygiene comprising an outer surface; wherein a measured portion of said outer surface of said insertion end comprises a first surface area and a measured portion of said outer surface of said withdrawal end comprises a second surface area, wherein at least a portion of the first surface area further comprises surface aberrations; and wherein said surface aberrations are protuberances.

As stated in the Office Action of 2 May 2006 on page 5, "Schoelling does not teach protuberances."

Accordingly, Applicant respectfully submits that claims 5-7, 9-11, 13, 14, 18 and 19 are non-obvious in view of Schoelling.

### Rejection Under 35 U.S.C. §103(a) Over Schoelling (U.S. 2001/0014348) in view of Child et al. (U.S. 6,283,952)

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Claim 20 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Schoelling as applied to claims 5-7, 9-11, 13, 14, 18 and 19, in view of Child et al.

With respect to claim 20 and obviousness: Applicants respectfully traverse the rejection as Schoelling neither discloses or suggests a tampon for feminine hygiene comprising an outer surface; wherein a measured portion of said outer surface of said insertion end comprises a first surface area and a measured portion of said outer surface of said withdrawal end comprises a second surface area, wherein at least a portion of the first surface area further comprises surface aberrations; and wherein said surface aberrations are protuberances.

As stated in the Office Action of 2 May 2006 on page 5, "Schoelling does not teach protuberances."

Accordingly, Applicant respectfully submits that claim 20 is non-obvious in view of Schoelling and Childs et al.

Rejection Under 35 U.S.C. §103(a) Over Schoelling (U.S. 2001/0014348) in view of  
Kraemer et al. (U.S. 2002/0120243)

Claim 4 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Schoelling as applied to claims 5-7, 9-11, 13, 14, 18 and 19, in view of Kraemer et al.

With respect to claim 4 and obviousness: Claim 4 has been cancelled in the present response and incorporated into independent claim 13. Therefore, the arguments presented below are made with respect to currently amended independent claim 13 and its dependent claims 5-7, 9-11, 14, and 18-20. Applicant respectfully traverses the rejection as the cited references do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when

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combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vacck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

1. No suggestion or motivation to modify Schoelling in light of reference teachings

Applicant submits that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Schoelling or to combine the reference teachings to achieve the claimed invention.

Schoelling discloses a tampon, which is designed to control its absorbency and expandability without additional preparation expenses and costs. (Page 1, Paragraph 0004) The tampon 10 is substantially enclosed within a cover 22 comprising fluid impervious plastic material in the form of a resilient three-dimensional web having perforations 24. (Page 1, Paragraph 0014) As mentioned above and noted in the Office Action Schoelling does not disclose or suggest a tampon for feminine hygiene comprising an outer surface; wherein a measured portion of said outer surface of said insertion end comprises a first surface area and a measured portion of said outer surface of said withdrawal end comprises a second surface area, wherein at least a portion of the first surface area further comprises surface aberrations; and wherein said surface aberrations are protuberances.

Kraemer et al. discloses an intravaginal device for feminine hygiene that comprises a core, which is completely surrounded by a sheathing that is impermeable to liquid water. This non-absorbency of the intravaginal device is further stated on Page 1, Paragraph 0010, "As used herein the specification and the claims, the term "intravaginal device" and related terms includes support devices, obstructing devices useful to block the flow of and/or collect bodily fluids, and the like...However, the devices themselves, do not absorb the body liquids."

There is no disclosure in Schoelling of the benefit or desire to modify its cover to contain protuberances. Schoelling's invention is concerned with the use of perforations in

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a fluid impervious plastic tampon cover. The perforations in the cover serve to manage the expansion of a tampon by controlling the amount of bodily fluids absorbed along the length of the tampon. (Page 1, Paragraph 0014) There is no indication in Schoelling that the addition of fluid impervious protuberances to the perforations in its cover would have any effect, much less a positive effect on the ability of the cover to control absorption and expansion of the core.

Furthermore, even though Kraemer et al. teaches embossed points (protuberances), the points are used in a manner that teaches nothing to the skilled person viewing Schoelling. As discussed above Schoelling teaches a tampon for the controlled absorption of bodily fluids and Kraemer et al. teaches an intravaginal device that is impermeable to bodily liquids. Therefore how can Kraemer et al. motivate one of ordinary skill in the art to combine its embossed points with the tampon disclosed in Schoelling when it does not teach that a tampon, or its embossed points can be used to absorb bodily fluids, or that embossed points have any effect on the control of absorption of bodily fluids?

Accordingly, Applicant respectfully submits that there is no motivation to combine Schoelling with the teachings of Kraemer et al.

2. No reasonable expectation of success

The invention is directed to a tampon for feminine hygiene comprising an outer surface; wherein a measured portion of said outer surface of said insertion end comprises a first surface area and a measured portion of said outer surface of said withdrawal end comprises a second surface area, wherein at least a portion of the first surface area further comprises surface aberrations; and wherein said surface aberrations are protuberances.

Neither reference discloses that protuberances can be used on a tampon's surface to absorb bodily fluids. (Spec. Page 7, Lines 1-5) Rather, the perforations in the fluid impervious plastic cover of Schoelling are used to control fluid absorption into the core and the protuberances of Kramer et al. are liquid impervious and used to more reliably position the intravaginal device for when the user is engaging in sporting activity.

Accordingly, Applicant submits that there is no reasonable expectation of success in achieving the present invention by combining (or attempting to combine) the

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perforated liquid impervious outer cover of Schoelling with the fluid impermeable embossed points of Kraemer et al.

For the reasons above, Applicant respectfully submits that the Office Action fails to make out a *prima facie* case of obviousness for claims 5-7, 9-11, 13, 14 and 18-20.

Rejection Under 35 U.S.C. §103(a) Over Schoelling (U.S. 2001/0014348) in view of  
Schoelling (U.S. 2002/0151859)

Claim 16 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Schoelling in view of Schoelling (U.S. 2002/0151859; hereinafter '859)

With respect to claim 16 and obviousness: Claim 16 has been cancelled in the present response.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 5-7, 9-11, 13, 14 and 18-20 is respectfully requested.

Respectfully submitted,

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